Supreme Court, U.S.
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No. 84-1781 (2)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

ALL AMERICAN LIFE AND CASUALTY COMPANY,
an Illinois insurance corporation,
Petitioner,

v.

OCEANIC TRADE ALLIANCE COUNCIL INTERNATIONAL, INC.,
a Michigan corporation,
Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTORARI

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

ISSUE I:

IS IT NECESSARY AND ADVISABLE FOR THIS COURT TO GO BEYOND THE ESTABLISHED APPELLATE STANDARD REVIEW OF TRIAL COURT RULINGS PURSUANT TO F.R.E. 403 AND ESTABLISH "REASONABLE CRITERIA" BY WHICH TO DETERMINE WHETHER THERE HAS BEEN AN ABUSE OF DISCRETION BY THE TRIAL COURT?

ISSUE II:

DID THE SIXTH CIRCUIT COURT OF APPEALS CLEARLY ERR IN ITS DETERMINATION THAT THE TRIAL COURT DID NOT COMMIT A CLEAR ABUSE OF DISCRETION BY REFUSING TO PERMIT ALL AMERICAN TO RECALL WITNESS LONNIE THOMAS IN ORDER TO HAVE MR. THOMAS TESTIFY AS TO HIS KNOWLEDGE OF THE ALLEGED ATTEMPTS BY ROBERT DELANEY, ESQUIRE, AND JOHN KILEY TO TAMPER WITH THOMAS' TESTIMONY AT KILEY'S MURDER TRIAL?

TABLE OF CONTENTS

	PAGE
INDEX OF AUTHORITIES	iii
COUNTER-STATEMENT OF QUESTIONS PRESENTED	i
ARGUMENT	1
CONCLUSION	14

INDEX OF AUTHORITIES

CASES	PAGE
Block v *Macy*, 712 F. 2d 1241 (8th Cir., 1983)	2, 5
Hewitt v *City of Truth or Consequences*, 758 F. 2d 1375 (10th Cir., 1985)	2
Longenecker v *G.M.*, 594 F. 2d 1283 (9th Cir., 1979)	3
McKinney v *Galvin*, (6th Cir., 1983)	2
Miller v *Poretsky*, 595 F. 2d 780 (D.C.C. 1978)	2, 5
U.S. v *Abel*, ___ US ___; 83 L. Ed. 2d 450; 105 S. Ct. 465 (1984)	2, 3, 5
U.S. v *Akbar*, 698 F. 2d 378 (9th Cir., 1983), cert. den. 461 U.S. 959; 103 S. Ct. 2433 (1983)	2
U.S. v *Billups*, 692 F. 2d 320 (4th Cir., 1982)	2
U.S. v *Boyer*, 694 F. 2d 58 (3d Cir., 1982)	2
U.S. v *Brown*, 547 F. 2d 1264 (5th Cir., 1977)	2
U.S. v *Dwyer*, 539 F. 2d 924 (2nd Cir., 1976)	2, 5
U.S. v *Fosher*, 590 F. 2d 381 (1st Cir., 1979)	2, 5
U.S. v *Johnson*, 558 F. 2d 744 (5th Cir., 1977), cert. den. 434 U.S. 1065; 98 S. Ct. 1241; 55 L. Ed. 2d 766 (1978)	2, 3
U.S. v *Juarez*, 561 F. 2d 65 (7th Cir., 1977)	3

INDEX OF AUTHORITIES — (Cont'd)

CASES **PAGE**

U.S. v *Morano*,
697 F. 2d 923 (11th Cir., 1983) 2, 5

U.S. v *Radlick*,
581 F. 2d 225 (9th Cir., 1978) 3

U.S. v *Robinson*,
460 F. 2d 507 (2d Cir., 1977), cert. den. 435 U.S. 905; 98 S. Ct. 1451 ..... 2, 3

U.S. v *Serlin*,
707 F. 2d 953 (7th Cir., 1983) 2, 5

Wright v *Hartford Accident & Indemnity Co.*,
580 F. 2d 809 (5th Cir. 1978) 2, 3

STATUTES

Rule 403, Federal Rules of Evidence 1, 2, 3, 4, 5

ARGUMENT

The subject of the Briefs now before this Court is Rule 403 of the Federal Rules of Evidence which reads as follows:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue waste of time, or needless presentations of cumulative evidence.

The Petitioner herein, All American Life and Casualty Company, requests this Honorable Court to review the decision of the Court of Appeals which upheld a ruling made by the trial court pursuant to Rule 403. The Petitioner offers alternate bases for its prayer for review.

First, the Petitioner asserts that, since Rule 403 was enacted, the Federal appellate courts, including this Honorable Court, have failed to establish "reasonable criteria" with which to enforce the "abuse of discretion" test for trial court rulings pursuant to Rule 403. In this regard, the Petitioner claims that the lack of a strict and elaborate appellate standard of review has resulted in a divergence among the Court of Appeals circuits, and therefore, no clear legal test for Rule 403 rulings.

Secondly, the Petitioner argues that the Sixth Citcuit Court of Appeals deciding this case failed to recognize a clear abuse of discretion by the trial court in one of its evidentiary rulings under Rule 403.

However, a review of existing case law, the decision by the Court of Appeals, and the record herein, reveals that there is absolutely no merit to the arguments made by the Petitioner in support of its request for Supreme Court review.

A. ALL FEDERAL APPELLATE COURTS PRESENTLY AND CONSISTENTLY ENFORCE A CLEAR, UNDERSTANDABLE AND FLEXIBLE APPELLATE STANDARD OF REVIEW FOR TRIAL COURT RULINGS PURSUANT TO RULE 403 OF THE FEDERAL RULES OF EVIDENCE.

Despite the Petitioner's amazing assertions to the contrary, there presently exists a clear and understandable standard of review with regard to Rule 403 of the Federal Rules of Evidence, a standard of review which is consistently enforced by *all* the Federal appellate courts. This standard is succinctly stated as follows: did a trial court commit a clear abuse of discretion in its balancing of the probative value of evidence against various negative factors such as unfair prejudice, confusion of the issues, misleading the jury, undue waste of time, and needless presentation of cumulative evidence. See; *U.S.* v *Abel*, ____ U.S. ____; 83 L. Ed. 2d 450; 105 S. Ct. 465 (1984); *U.S.* v *Fosher*, 590 F. 2d 381 (1st Cir., 1979); *U.S.* v *Dwyer*, 539 F. 2d 924 (2nd Cir., 1976); *U.S.* v *Boyer*, 694 F. 2d 58 (3d Cir., 1982); *U.S.* v *Billups*, 692 F. 2d 320 (4th Cir., 1982); *U.S.* v *Brown*, 547 F. 2d 1264 (5th Cir., 1977); *McKinney* v *Galvin*, (6th Cir., 1983); *U.S.* v *Serlin*, 707 F. 2d 953 (7th Cir., 1983); *Block* v *Macy*, 712 F. 2d 1241 (8th Cir., 1983); *U.S.* v *Akbar*, 698 F. 2d 378 (9th Cir., 1983), cert. den. 461 U.S. 959; 103 S. Ct. 2433 (1983); *Hewitt* v *City of Truth or Consequences*, 758 F. 2d 1375 (10th Cir., 1985); *U.S.* v *Morano*, 697 F. 2d 923 (11th Cir., 1983); *Miller* v *Poretsky*, 595 F. 2d 780 (D.C.C., 1978).

In its assessment of the legal relevant of evidence within the provisions of F.R.E. 403, the trial court has wide discretion. *U.S.* v *Johnson*, 558 F. 2d 744 (5th Cir., 1977), cert. den. 434 U.S. 1065; 98 S. Ct. 1241; 55 L. Ed. 2d 766 (1978); *Wright* v *Hartford Accident & Indemnity Co.*, 580 F. 2d 809 (5th Cir., 1978); *U.S.* v *Robinson*, 460 F. 2d 507 (2d Cir., 1977), cert. den. 435 U.S. 905; 98 S. Ct. 1451. Indeed, extremely broad discretion has been accorded to the trial judge in such matters in deference to the trial court's supe-

rior position to sense the dynamics at trial. *U.S.* v *Abel, Supra; U.S.* v *Robinson, Supra; Longenecker* v *G.M.*, 594 F. 2d 1283, 1286 (9th Cir., 1979); *U.S.* v *Radlick*, 581 F. 2d 225, 229 (9th Cir., 1978); *U.S.* v *Juarez*, 561 F. 2d 65, 71 (7th Cir., 1977). Unlike the appellate courts, that deal only with the cold black and white record, the trial court sees the witnesses, parties, jurors and counsel, their mannerisms and reactions, and, on the basis of personal observation, is able to evaluate the potential impression of evidence upon a jury. *U.S.* v *Robinson, Supra.*

Hence, a standard of appellate review has evolved which upholds a trial judge's exercise of discretion under F.R.E. 403: unless the trial court acts arbitrarily or irrationally, the Court of Appeals will *not* substitute its judgment for that of the trial court. *U.S.* v *Abel, Supra; U.S.* v *Robinson, Supra; U.S.* v *Johnson, Supra; Wright* v *Hartford Accident & Indemnity Co., Supra.*

Now, the Petitioner herein has asserted that the "abuse of discretion" standard of appellate review is not good enough. According to the Petitioner, it is necessary for this Court to enunciate a more definite test, or as the Petitioner has stated, "reasonable criteria" by which to judge whether a trial court has abused the discretionary role contemplated in Rule 403. There is simply no foundation for the Petitioner's concern regarding the sufficiency of the existing appellate standard of review over trial court rulings pursuant to Rule 403 of the Federal Rules of Evidence.

First, common sense dictates that there can never be a standard list of criteria by which to measure the reasonableness of a trial court's assessment of the admissibility or non-admissibility of evidence under the terms of Rule 403. For, every case is different. Evidence that may be clearly admissible under one set of circumstances may be absolutely inadmissible under different circumstances. Or, under a a given set of facts, the same evidence may have either a mere or a great tendency to cause unfair prejudice, con-

fusion of the issues, a misleading of the jury, a waste of time, and/or a needless presentation of cumulative evidence. Like snowflakes, no two cases are alike.

Thus, it is impossible to mandate a rigid formula whereby a trial judge is to assess the probative value of evidence against the negative factors enunciated in Rule 403. This very fact is reflected in the Committee Notes which accompany Rule 403; notes which acknowledge the need for a *generalized and flexible* evidentiary rule such as is emboided in the Rule:

> The case law recognizes that certain circumstances call for the exclusion of evidence which is of unquestioned relevance. These circumstances entail risks which range all the way from inducing decision on a purely emotional basis, at one extreme to nothing more harmful than merely wasting time, at the other extreme. Situations in this area call for balancing the probative value of and need for the evidence against the harm likely to result from its admission. (Citations omitted). The rules which follow in this Article are concrete applications evolved for particular situations. *However, they reflect the policies underlying the present rule, which is designed as a guide for the handling of situations for which no specific rules have been formulated.*
>
> Notes of Advisory Committee on Proposed Rules, emphasis supplied.

Furthermore, even though Rule 403 was purposely designed to accommodate the variety of evidentiary questions which may arise at trial, the Federal courts have in fact established an appropriate standard by which to evaluate the propriety of a trial court's rulings under this Rule of Evidence.

Cases across the Federal circuits reflect that, when reviewing a trial court's rulings under Rule 403, an appellate

court concentrates on four factors. First, did the trial court appear to at least listen to the arguments of counsel. *U.S.* v *Abel, Supra; U.S.* v *Dwyer, Supra.* Secondly, did the trial court in fact weigh the probative value of the evidence against certain competing considerations, with an eye toward admitting relevant evidence if at all possible. *U.S.* v *Abel, Supra; U.S.* v *Fosher, Supra; U.S.* v *Dwyer, Supra; U.S.* v *Serlin, Supra; Block* v *Macy, Supra; Hewitt* v *City of Truth or Consequences, Supra.* Here, the appellate courts appreciate articulation by the trial court of the factors which balanced in favor of admissibility, as opposed to those factors favoring inadmissibility. *U.S.* v *Fosher, Supra; U.S.* v *Dwyer, Supra; U.S.* v *Serlin, Supra; U.S.* v *Dwyer, Supra; Block* v *Macy, Supra; U.S.* v *Morano, Supra.* Thirdly, analysis is given to whether a limiting instruction was requested and/or appropriate. *U.S.* v *Abel, Supra.* Finally, the appellate courts themselves must review the actual facts of a given case to determine whether a *clear* abuse of discretion occurred. While appellate courts do not lightly overturn or criticize a trial court's rulings pursuant to Rule 403, such action will follow where justified. See, i.e., *Miller* v *Poretsky, Supra.*

In sum, existing case law demonstrates that there is an appropriate appellate standard of review which both protects the discretion required by trial courts in balancing the probative value of evidence against its negative effects, and, protects party litigants from any undue prejudice emanating from the trial court's evidentiary rulings.

The Respondent, Oceanic Trade Alliance Council, Inc., respectfully submits it is not now necessary or prudent for this Court to develop a more definite appellate standard of review over trial court rulings pursuant to Rule 403 of the Federal Rules of Evidence. The present flexible standard of review, consistently enforced by all Federal appellate courts, serves to preserve both the integrity and accountability of the Federal District Courts.

B. THE TRIAL COURT BELOW DID NOT COMMIT A CLEAR ABUSE OF DISCRETION IN REFUSING TO PERMIT PLAINTIFF ALL AMERICAN TO RECALL LONNIE THOMAS IN ORDER TO HAVE MR. THOMAS TESTIFY AS TO HIS KNOWLEDGE OF THE ALLEGED ATTEMPTS BY ROBERT DELANEY, ESQUIRE AND JOHN KILEY TO TAMPER WITH THOMAS' TESTIMONY AT KILEY'S MURDER TRIAL.

When the Court of Appeasl below reviewed the facts of the trial in this case, it concluded that the trial court did not clearly abuse its discretion in refusing to permit Plaintiff All American Life and Casualty Company to recall witness Lonnie Thomas in order to have Mr. Thomas testify as to his knowledge of alleged attempts by Robert Delaney, Esquire and John Kiley to tamper with Mr. Thomas' testimony at Mr. Kiley's murder trial. The record at trial wholly supports this determination by the Court of Appeals.

All American's "affirmative defense" of "corporate homocide" rested largely on allegations that John Kiley and Matt Alfei, officers and shareholders of Oceanic Trade Alliance Council International, Inc. (hereinafter denominated as "OTAC"), conspired to kill Guy Willetts in order to receive their respective shares of the proceeds of the life insurance policy issued by All American and owned by OTAC on the life of Willetts. In this regard, many of All American's proofs at the time of trial herein centered on the Willetts' murder trial.

Guy Willetts was shot to death on February 1, 1979 while sitting in a car parked outside the Soup Kitchen Saloon in Detroit, Michigan (trial transcript p. 909). Shortly after Mr. Willetts' murder, City of Detroit Police arrested John Kiley, Matt Alfei and Lonnie Thomas. Mr. Kiley was charged with first degree murder and conspiracy to commit murder (trial transcript p. 909). Mr. Alfei was charged with conspiracy to commit murder. Mr. Thomas, the alleged "hit man" was originally charged with first degree murder. Later, the Prosecutor's Office for Wayne County, Michigan permit-

ted Thomas to plead guilty to a lesser charge of second degree murder in exchange for a promise by Thomas to testify against Kiley (trial transcript pp. 429, 989).

Prior to the criminal trial, the charges against Alfei were dropped. The trial continued as against Mr. Kiley, at the close of which the jury returned a verdict of "not guilty" (trial transcript p. 909).

Throughout the aforegoing criminal proceedings, Lonnie Thomas was represented by J. Robert Gregg, Esquire. John Kiley and Matt Alfei were represented by Robert Delaney, Esquire. It is essential to note that Mr. Delaney provided representation and counsel to OTAC during the course of the instant proceedings, including the trial below.

During the course of the trial below, All American called Lonnie Thomas as a witness (trial transcript p. 432). However, Mr. Thomas refused to provide any substantive testimony on the grounds that such testimony would tend to incriminate him (trial transcript pp. 433-436). As a result, All American elected to read into evidence Mr. Thomas' testimony during the Willetts murder trial on other related criminal proceedings (trial transcript pp. 465-466). Thereafter, OTAC countered by offering a hand-written statement identified by Thomas as his own, wherein Thomas retracted his prior confession to the murder or Guy Willetts (trial transcript pp. 436, 467). Initially, the evidence was ruled inadmissible by the trial court (trial transcript p. 476). Subsequently, the trial court reconsidered, ruling that the hand written statement would be admitted for impeachment purposes, only (trial transcript pp. 911-913). However, OTAC later withdrew their offer of the statement for any purpose (trial transcript p. 983).

Late in the course of the trial in this matter, in fact, during All American's case in rebuttal, All American asked to recall Lonnie Thomas to the stand in order to impeach Mr. Thomas with newly found evidence (trial transcript pp. 982-985). This newly found evidence consisted in part of

certain transcribed statements made by Mr. Thomas at two separate **in camera** hearings requested by Thomas and held before City of Detroit Recorder's Court Judge Justin Ravitz during the course of the Willetts murder trial (a trial held before Judge Kerwin) (trial transcript pp. 983-988). During the **in camera** hearings, some discussion was had as to Thomas' allegation that the criminal defendant, John Kiley, and his attorney, Robert Delaney, had offered Thomas and his family money in attempts to convince Thomas to testify favorably as to Mr. Kiley during the murder trial (trial transcript p. 985). Similar allegations of bribery were contained in a prior hand written statement by Thomas which had also been directed to the attention of Judge Ravitz. Counsel for All American had just learned of the existence of these prior statements by Thomas and was able to offer them in the instant matter only after convincing Judge Ravitz to lift a supression order which had been imposed at the time the statements were made (trial transcript pp. 985-988).

When the trial court below questioned the relevance of the proffered evidence, counsel for All American responded that evidence of the alleged attempted bribe of Lonnie Thomas tended to rebut prior testimony by Thomas that he had voluntarily plead guilty to second degree murder (trial transcript p. 989-990). When pressed, counsel for All American conceded that the plaintiff was attempting to impeach its own witness (Thomas) on rebuttal (trial transcript p. 990-991). The trial court ruled that plaintiff's offer was improper on rebuttal and, that, in effect, plaintiff was actually trying to reopen its case in chief (trial transcript p. 991).

All American's counsel acquiesced to the trial court's characterization of plaintiff's evidentiary request, and insisted that All American be allowed to reopen its case in order to offer the proffered evidence so as to prove that Kiley and Delaney tried to bribe Thomas during the pendency of the Willetts murder trial (trial transcript pp. 991-993). At this point, the trial court noted that, if offered as substantive evidence against Kiley, Thomas' prior out-of-court statements were inadmissible hearsay statements (trial transcript

pp. 993-994). The court below also voiced its concern about the problems the proffered evidence would cause in light of the fact that Robert Delaney currently represented the Defendant OTAC (trial transcript p. 994).

Despite the trial court's expressed trepidations, All American's counsel again stressed that plaintiff wanted a chance to prove that Kiley and Delaney attempted to bribe Lonnie Thomas into providing favorable testimony at Kiley's murder trial (trial transcript pp. 994-995. *In fact, counsel for All American actually expressed a desire to expose Mr. Delaney to the jury; to prove to the jury that Robert Delaney had tried to tamper with the witness in his efforts to acquit John Kiley of murder charges* (trial transcript p. 998).

After receiving OTAC's objection to All American's offer of "rebuttal" evidence, the trial court ruled the evidence inadmissible as being more prejudicial than probative:

> . . . There isn't any way — assuming you have accurately summarized it and that the party's whose testimony you offered and now want to impeach has called Mr. Delaney a criminal and said Mr. Delaney offered to bribe him in this case and assume he says that Mr. Kiley offered to bribe him in this case, the only conceivable basis for letting it in to the trial would be to impeach Mr. Thomas and *I have never in my life heard testimony that would be more prejudicial and probative on that issue*. You can't even pretend that you are trying to impeach Thomas. *What you are trying to do is smear Delaney.*
>
> Trial transcript pp. 999-1000, emphasis supplied.

Counsel for All American objected that it wasn't trying to "smear" Mr. Delaney, yet, plaintiff's counsel again insisted that the evidence of Delaney's alleged misconduct should be placed before the jury in this case, as well as the general public (trial transcript p. 1000).

The court responded that its only concern was what was properly before the jury sitting in the instant case:

> Well, you can make anything you want to public. I'm not surpressing anything so far as what is public. That isn't my concern. *My concern at the moment is what this jury hears on the issue of whether or not OTAC should collect this insurance proceeds.* What you want to offer, the only possible excuse for offering your subsequent statement by Thomas is to impeach him. It's no different in effect than the subsequent statement by Thomas.

Trial transcript p. 1000, emphasis supplied.

As arguments continued, the trial court repeatedly pointed out the limited probative value, but obvious prejudicial effect of the evidence offered by All American:

> *I think it would be grossly unfair, just terrible. It would turn this trial into an absolute mockery.* It would open up tons of evidence concerning Mr. Delaney's character, what happened in the jail. It would turn the whole matter into a brand new show and it would have virtually nothing to do with impeaching Thomas but if it did it would, the impeachment would be collateral.
>
> * * *
>
> I am denying your offer of proof. I am making a judgment matter. *It's one of the easiest ones I ever made because I have never seen anything that would be so prejudicial to a party and so unfair at this stage of the proceeding because what you are really trying to do, as I said before, is not impeach Thomas it's to smear Delaney and smear the plaintiffs.*
>
> If, in fact, you had evidence that Kiley made an offer to Thomas that would be substantive evidence.
>
> Trial transcript pp. 1002-1003, emphasis supplied.

However, despite this definative ruling by the trial court, counsel for All American continued in its efforts to con-

vince the court to allow All American to recall Lonnie Thomas to the witness stand (trial transcript pp. 1008-1009). Even while conceding that the testimony sought from Mr. Thomas would seriously compromise OTAC as the party defendant, as well as Mr. Delaney, individually, counsel for All American insisted that Thomas should be allowed to testify that Mr. Delaney had attempted to tamper with Thomas' testimony during the murder trial (trial transcript pp. 1009, 1010-1011). The trial court affirmed its earlier determination that admission of the evidence offered by All American would only operate to deprive OTAC of a fair trial (trial transcript p. 1011).

It is readily apparent that the subject evidentiary ruling by the trial court did not commit the clear abuse of discretion which is prohibited by law.

First, the record reveals that the trial court was attentive to the arguments of counsel.

While arguing for the admission of Thomas' prior statements wherein Robert Delaney and John Kiley are accused of trying to bribe Thomas into testifying in Kiley's favor at the Willetts murder trial, counsel for All American repeatedly stressed his desire to put before the jury "proof" that Delaney and Kiley had attempted to tamper with Thomas' prior testimony at the criminal trial (trial transcript pp. 990, 993-995, 998). In fact, plaintiff's counsel even admitted that he wished on rebuttal to expose Mr. Delaney's alleged misconduct before the jury in the instant matter, as well as the public at large (trial transcript pp. 998, 1000).

It was based upon the prior dynamics at trial, including the inter-reaction among counsel, the court and the jury, that the trial court below had no difficulty seeing through plaintiff's offer of "impeachment" or "rebuttal" evidence: the court below astutely recognized that plaintiff's real or ultimate intent was to smear or slander Robert Delaney, one of OTAC's counsel at trial (trial transcript pp. 998-1001). Utilizing its wide discretion under FRE 403, the trial court prop-

erly stopped plaintiff from making a travesty of justice at the expense of the defendant OTAC.

Secondly, in resolving not to permit All American to introduce evidence tending to support allegations that Kiley and Delaney had attempted to bribe Lonnie Thomas during the Willetts murder trial, the trial court deliberately weighed the alleged probative value of the proffered evidence against considerations of unfair prejudice, confusion of the issues, and a misleading of the jury. Moreover, the trial court clearly articulated why it found the evidence to be inadmissible.

In this regard, the trial court expressed a concern that the jury would be confused or mislead by an introduction of the evidence (trial transcript p. 1000). This concern was warranted. Again, the sole issue before the jury in this matter centered upon whether OTAC was entitled to recover the proceeds of an insurance policy issued by All American on the life of Guy Willetts. In this regard, the jury was to determine: 1) whether Kiley and Alfei, officers of OTAC, had conspired to murder Guy Willetts; and, 2) whether any criminal conspiracy on the part of Kiley and Alfei could be imputed to OTAC. *No other alleged criminal activity on the part of Kiley or Alfei, or any one else, was to be part of the instant case*. Yet, had plaintiff been successful in introducing evidence that Kiley and Delaney had attempted to tamper with Thomas' testimony to be given during the Willetts murder trial, the jurors herein would have necessarily been required to resolve, at least in their own minds, whether Kiley and Delaney were guilty of the plaintiff's newly asserted allegations of obstruction of justice. The trial court wisely determined that such a confusion of the issues was not to be permitted.

The trial court also noted that OTAC's position would be severely prejudiced if plaintiff was allowed to try to prove that Delaney and Kiley had tampered with the testimony of Lonnie Thomas during the Willetts murder trial in order to secure an acquittal for Kiley. How could the jury not react adversely to such serious allegations of high-handed

obstruction of justice on the part of an officer of OTAC and one of OTAC's trial counsel? This is especially true, with respect to the adverse ramifications arising from any insinutations of misconduct on the part of Mr. Delaney.

The jury had just listened to and watched Mr. Delaney represent OTAC during the entire course of trial. It would have been grossly unfair to have allowed plaintiff, on rebuttal, to suddenly call Mr. Delaney's integrity, morality and credibility into issue. Such an attack on Mr. Delaney's character would have caused irreparable harm to OTAC — no curative or limine instruction could have ever erased from the jury's mind the gross insinutations of abhorrent misconduct on the part of one of OTAC's trial counsel. The trial court below should be commended for its quashing of all plaintiff's efforts to make such a mockery of justice at the expense of the defendant OTAC.

On appeal in the Sixth Circuit, the trial court's determination regarding the admissibility of the evidence of alleged witness tampering offered by All American on rebuttal was reviewed in a light most favorable to All American, Petitioner herein (Court of Appeals' Opinion, Appendix p. 9a). Based on its review of the record at trial, and after entertaining the arguments of counsel, the Court of Appeals below had no difficulty in concluding that the exclusion of the subject evidence was not an abuse of discretion:

> From our review of the record in this case, even viewing the proffered evidence in the light most favorable to the proponent, we cannot say that the trial court abused its discretion in excluding this evidence.
>
> Court of Appeals' Opinion, App. p. 9a.

In sum, there is absolutely no merit whatsoever to the claims of the Petitioner herein that the Court of Appeals erred in its appellate review or that the trial court abused its discretion in finding the proffered out-of-court statements of Lonnie Thomas to be more prejudicial that probative. Rather, this particular evidentiary determination demands, and has already properly received, affirmation.

CONCLUSION

For the reasons discussed herein, the Respondent, Oceanic Trade Alliance Council International, Inc., respectfully requests this Honorable Court to deny the Petition for Writ of Certiorari filed by the All American Life and Casualty Company. Furthermore, considering the extraordinary lack of merit to the arguments in support of the Petitioner's request for review, the Respondent Oceanic Trade Alliance Council International, Inc. respectfully requests an award of costs.

Respectfully submitted,

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